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another. From a decree dismissing the bill, complainants appeal. Reversed and remanded, with directions.

McGuire, Riely & Bryan and *J. G. Jefferson, Jr.*, for appellants.

R. G. Southall, for appellees.

VIRGINIA BREWING CO. *v.* COMMONWEALTH.

Jan. 18, 1912.

[73 S. E. 454.]

Intoxicating Liquors (§ 96*)—Liquor Dealer's Tax—Recovery—Involuntary Payment.—Under Code 1904, § 567, which provides that any person aggrieved by an assessment of taxes may apply to the courts for redress, the tax must have been involuntarily paid under protest; and where, on the refusal of a brewing company's application for a license to establish a distributing house, with advice of the court that the license could not be issued without the payment of a wholesale malt liquor dealer's tax, and that the conduct of the business, without such a payment, would render the company and its agents liable to criminal prosecution, the company paid the tax without a seizure of its property, or the adjudging of a penalty against it, there was no such compulsion as is necessary to justify the recovery.

[Ed. Note.—For other cases, see *Intoxicating Liquors*, Cent. Dig. § 96.* 11 Va.-W. Va. Enc. Dig. 136, 137.]

Error to Corporation Court of Lynchburg.

Action by the Virginia Brewing Company against the Commonwealth. From a judgment dismissing the petition, plaintiff brings error. Affirmed.

Harper & Goodman, for plaintiff in error.

Attorney General, for the Commonwealth.

BOARD OF SUP'RS OF NORFOLK COUNTY et al. *v.* DUKE et al.

Jan. 18, 1912.

[73 S. E. 456.]

1. Statutes (§ 90*)—Constitutional Law (§ 61*)—Municipal Corporations (§ 12*)—Division of Governmental Power—Exercise of Legislative Power—Exercise by Judiciary—Incorporation of Town.—Const. 1902, § 5, and article 3 (Code 1904, pp. ccix, ccxvii), required the legislative, executive, and judicial departments to be separate; and section 117 (page ccxxxviii) provides that general laws for the organi-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

zation and government of cities and towns shall be enacted by the General Assembly, and no special act shall be passed in relation thereto, except in the manner provided by article 4, and then only by a two-thirds vote. Laws 1908, c. 308, provides that whenever a petition, signed by 20 electors of an unincorporated town or a thickly settled community, shall be presented to the circuit court of the county, stating the boundaries, population, etc., and the court shall be satisfied that it will be to the best interest of the inhabitants of the said town, that the prayer of the petition is reasonable, that the general good of the community will be promoted, that the number of inhabitants exceeds 200, and does not exceed 5,000, and that the area embraced therein is not excessive, it shall decree that the town be incorporated. Held, that section 117 required the Legislature to provide by general laws for the creation of municipal corporations, and it could not be said that Laws 1908 delegated legislative powers to the circuit court, contrary to the Constitution.

[Ed. Note.—For other cases, see Statutes, Dec. Dig. § 90;* Constitutional Law, Dec. Dig. § 61;* Municipal Corporations, Dec. Dig. § 12.* 3 Va.-W. Va. Enc. Dig. 169.]

2. Constitutional Law (§ 14*)—Construction.—The language of the Constitution should be construed according to the ordinary meaning of the words used therein, not being ambiguous.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. § 11; Dec. Dig. § 14.* 14 Va.-W. Va. Enc. Dig. 746.]

3. Words and Phrases—"Organize."—"To organize" means to arrange or constitute in parts; each having a special function or relation.

[Ed. Note.—For other definitions, see Words and Phrases, vol. 6, pp. 5053, 5054. 3 Va.-W. Va. Enc. Dig. 149.]

4. Municipal Corporations (§ 7*)—Organization—Reasonableness.—Laws 1908, c. 308, authorizes the circuit court of a county, on petition of the electors of any thickly settled community to have it incorporated as a town; if the court be satisfied that the petition is reasonable, and that the general good of the community will be thereby promoted, to order the town to be incorporated. The community sought to be organized as a town is a part of a continuous settlement which is divided by a railway, and the two parts of the settlement are contiguous and homogeneous in population and interest, and some of the streets pass through both towns. Held, that it was not reasonable, or for the best interest of the community, that the part of the community in question be incorporated as a town.

[Ed. Note.—For other cases, see Municipal Corporations, Dec. Dig. § 7.* 10 Va.-W. Va. Enc. Dig. 158.]

*For other cases see same topic and section NUMBER in Dec. Dig & Am. Dig. Key No. Series Rep'r Indexes.

Error to Circuit Court, Norfolk County.

Petition by John T. Duke and others against the Board of Supervisors of Norfolk County and others to have territory incorporated as a town. Order granting the petition, and defendants bring error. Reversed, and petition dismissed.

Sale, Mann & Tyler, J. W. Happer, and T. J. Wool, for plaintiffs in error.

Jno. N. Sebrell, Jr., for defendants in error.

ARMINIUS CHEMICAL CO. et al. v. LANDRUM et al.

Jan. 18, 1912.

[73 S. E. 459.]

1. Judgment (§ 251*)—Applicability to Pleadings.—Plaintiffs' amended declaration sought to recover for injury to land by an alleged nuisance committed and maintained by defendants prior to the commencement of the action, consisting of the pollution of a water course by which plaintiffs' lands were subject to a deposit of iron pyrites and sulphurous substances from defendants' mines. Defendants' plea charged that any nuisance was permanent in character, and that all damages therefrom must be recovered in one action, and concluded with an averment that plaintiffs ought not to maintain a claim for temporary damages. Another plea raised the same question, and concluded that the cause of action pleaded did not accrue within five years before suit. The replication to both pleas was general. The jury found defendants guilty of the trespass alleged in the declaration and that plaintiffs had been damaged to the extent of \$800. Held, that such verdict constituted an adverse finding on defendants' pleas and that a judgment for plaintiffs on such verdict was not objectionable as in conflict with the declaration and replication.

[Ed. Note.—For other cases, see Judgment, Cent. Dig. § 437; Dec. Dig. § 251.* 8 Va.-W. Va. Enc. Dig. 296.]

2. Waters and Water Courses (§ 76*)—Pollution of Stream—Damages—Mitigation—General Benefits.—In an action against upper riparian mine owners for the pollution of a stream by the waste from their mines which flowed down on and injured plaintiffs' lands, evidence of general benefits accruing to plaintiffs' lands, in common with all the land in the vicinity arising from the fact that operation of defendants' mines caused an increase in the population, was admissible in mitigation of damages.

[Ed. Note.—For other cases, see Waters and Water Courses, Cent. Dig. § 64; Dec. Dig. § 76.* 4 Va.-W. Va. Enc. Dig. 210.]

3. Appeal and Error (§ 1040*)—Harmless Error—Rejection of Special Plea—General Issue.—Defendants in trespass were not prej-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.